

**NOTICE INVITING COMMENT ON APPEALS COURT'S  
PROPOSED ORDER CONCERNING ELECTRONIC FILING AND RELATED AMENDMENTS**

Following the public's positive response to the Appeals Court's electronic filing program provided at eFileMA.com and the Court's desire to maximize utilization of the system, the Appeals Court is publishing for public review and comment the attached proposed standing order and amendments related to electronic filing. In 2010, the Appeals Court adopted standing orders concerning electronic notices and e-mail filings that served as the foundation for parties and the Court to transition to electronic filing. In 2016, in coordination with the Supreme Judicial Court and the Trial Court, the Appeals Court launched its e-filing program at eFileMA.com. The Appeals Court program initially included civil cases and subsequently expanded to self-represented litigants, criminal cases, and the Court's single justice docket. The final expansion to impounded documents is anticipated in 2018.

The Appeals Court's system allows attorneys and litigants to use eFileMA.com to file and serve a PDF and submit no paper original or copies. From June through September 2017, 71% of all eligible briefs and appendices were e-filed, including 85% of briefs in criminal cases and 65% in civil cases. As the Appeals Court's e-filing platform is complete and operating successfully, the Court proposes adoption of a standing order requiring certain filings to be e-filed and other filings to be voluntarily e-filed, as specified in the proposal. Under the standing order, any party may file a motion for waiver of any mandatory requirement and instead file paper copies.

The Appeals Court respectfully invites comments on the following proposals:

I. Adoption of Appeals Court Standing Order Concerning Electronic Filing.

This standing order would:

- Make mandatory the registration in eFileMA.com by all attorneys with cases in the Appeals Court, which would also enroll the attorney in e-service and the Court's e-notice program.
- Make voluntary the registration and any e-filing of any document by a self-represented litigant (except litigants confined in an institution, who are exempt from e-filing).
- Make mandatory in criminal cases the e-filing by attorneys of all filings that are not impounded.
- Make mandatory in civil cases the e-filing by attorneys of briefs and record appendix volumes that are not impounded.
- Make voluntary the e-filing of impounded documents in civil and criminal cases, contingent upon the system enhancements being completed.
- Allow for waiver of the mandatory e-filing requirement by motion establishing undue hardship, significant prejudice, exigency, or other good cause.

- Close the [emotions@appct.state.ma.us](mailto:emotions@appct.state.ma.us) address required by Appeals Court standing orders for emailing PDFs of certain filings.
- Incorporate and supersede the standing order regarding e-mail filing of all post-panel motions and letters.
- Incorporate and supersede the order of July 29, 2016, that reduced the required number of copies of paper briefs and appendices from 7 to 4 given the Court's improved efficiencies and paperless practices.

## II. Amendments to or Rescission of Related Appeals Court Standing Orders and Orders.

1. Amendments to the Standing Order Concerning Petitions to the Single Justice Pursuant to G. L. c. 231, sec. 118 (First Paragraph) or Rule 12(a) of the Uniform Rules on Impoundment Procedure, and the Standing Order Governing Motions to Stay a Judgment or Execution of Sentence Filed Pursuant to M.R.A.P. 6.

- The amendments would remove mention of the "[emotions@appct.state.ma.us](mailto:emotions@appct.state.ma.us)" email address, and replace each with a reference to the electronic filing system, which is available at eFileMA.com.
- The amendments would provide for electronic service to parties.

2. Rescission of the "Standing Order Requiring the Electronic Filing of All Motions and Letters Filed After Panel Assignment."

- This standing order was adopted in 2010 and requires certain filings to be emailed to the Court's "[emotions@appct.state.ma.us](mailto:emotions@appct.state.ma.us)" email address. The address will be closed and all future electronic filings will be submitted via eFileMA.com pursuant to the proposed Appeals Court Standing Order Concerning Electronic Filing.

3. Rescission of the Appeals Court Order Concerning Electronic Filing Pilot Project, adopted March 30, 2016.

- This order will be superseded by adoption of the proposed Appeals Court Standing Order Concerning Electronic Filing.

4. Rescission of the Appeals Court Order Concerning Number of Copies of Brief and Record Appendix to be Filed, adopted July 29, 2016.

- This order will be superseded by adoption of the proposed Appeals Court Standing Order Concerning Electronic Filing.

III. Effective Date. An effective date is not identified because the proposed orders are contingent upon the Appeals Court's review of all public comments, any necessary revisions, and approval by the Supreme Judicial Court. The Appeals Court will provide sufficient advance notice and educational opportunities for parties unfamiliar with the e-filing system before, and

continue such opportunities after, the adoption of any of the above orders. For further information about the Appeals Court's program, please visit the Appeals Court's website.

IV. Comments. Comments may be emailed to [efilerulescomment@jud.state.ma.us](mailto:efilerulescomment@jud.state.ma.us) or by regular mail to Joseph Stanton, Clerk, Massachusetts Appeals Court, John Adams Courthouse, One Pemberton Square, Room 1200, Boston, MA 02108, on or before January 5, 2018.

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## **[Proposed] Standing Order Concerning Electronic Filing**

Pursuant to Rule 1 of Massachusetts Interim Electronic Filing Rules for Pilot Courts ("E-Filing Rules"), the Appeals Court hereby adopts this standing order concerning its electronic filing program.

### **A. Governing Rules and Orders.**

1. Filers who submit documents electronically through the e-filing service provider, Tyler Technologies ("Tyler"), on the Massachusetts Court System Odyssey File and Serve Site ("EfileMA.com") shall comply with the E-Filing Rules, the Massachusetts Rules of Appellate Procedure, and all other applicable Appeals Court rules and standing orders.
2. To the extent that any court rule or standing order is inconsistent with this Order governing electronic filing in the Appeals Court, the E-Filing Rules, or the Appeals Court electronic filing format requirements, then this Order, the E-Filing Rules, and the Appeals Court electronic filing format requirements shall control.

**B. Mandatory Attorney Registration for Electronic Filing and Service.** All law firms and attorneys with cases pending in the Appeals Court from this date forward shall register for electronic filing at [eFileMA.com](http://eFileMA.com). Registration shall not constitute a notice of appearance in any particular case. Attorney registrants are required to use their business email address on file with the Board of Bar Overseers. If such email address is different from the email address previously registered with the Appeals Court for receipt of electronic court notices, the filer shall file a change of email address with the Appeals Court.

**C. Mandatory Attorney Electronic Filing.** The following documents filed by an attorney representing a party to a case shall be filed electronically using eFileMA.com. Use of the eFileMA.com system constitutes "e-filed" as used herein.

1. All filings in criminal panel cases. All filings in public and partially impounded criminal panel cases (on the court's "P" docket) must be e-filed.
2. Briefs and appendices in civil panel cases. All briefs and appendices in public and partially impounded civil panel cases (on the court's "P" docket) must be e-filed.
3. Docketing statements. All docketing statements, in civil and criminal cases, must be e-filed pursuant to the Appeals Court Standing Order Concerning Docketing Statements for All Appeals (Civil and Criminal). Filers may request a waiver of the vendor convenience fee using a waiver account, as specified in E-Filing Rule 8.
4. All motions and letters filed after panel assignment. After the Appeals Court assigns a case to a panel of justices for consideration on the merits, either with or without oral

argument, all subsequent filings in the case must be e-filed. This requirement applies in all civil and criminal panel cases.

5. All filings on the Single Justice docket. All filings in public and partially impounded single justice cases (on the court's "J" docket) must be e-filed.

Except upon motion and order as provided in paragraph F, the Court may decline to docket any of the foregoing documents filed on paper.

#### **D. Voluntary Electronic Filing by Attorneys and Self-Represented Litigants.**

1. Scope. Any document that is not identified as mandatory in paragraph C may be e-filed. This includes all filings by self-represented litigants and impounded documents.

2. Self-represented litigants. Self-represented litigants with a case pending in the Appeals Court may register for electronic filing at eFileMA.com.

3. Public Access Scanner and Terminal. A public access terminal and scanner are located in the Clerk's Office of the Appeals Court, which may be used by any party to e-file a paper document without payment of the vendor convenience fee.

#### **E. Electronic Filing of Impounded Documents.**

1. Voluntary e-filing. Impounded documents may be e-filed through EfileMA.com, but there is no requirement to e-file an impounded document.

2. Marking impounded documents. The filer shall mark any impounded document as impounded on the cover or first page of the document, as required by E-Filing Rule 11(e), Mass. R. App. P. 16(m), 18(g), and S.J.C. Rule 1:15.

3. Designation of impounded documents on EfileMA.com. The filer shall designate the document as impounded using the appropriate field on EfileMA.com, which shall satisfy the requirement of providing written notice to the court of a document's impounded status. Impounded documents may otherwise be e-filed in the same manner as non-impounded documents.

4. Confidentiality. The confidentiality of an electronic record or an electronic or paper copy thereof is equivalent to that of a paper record. Access may be permitted only to the extent provided by law. Enotices from the eFileMA.com system containing hyperlinks to impounded documents shall be treated as confidential.

**F. Waiver of Mandatory Electronic Filing and Permission to File Paper Original and Copies.** Any document required to be e-filed under paragraph C of this order may be filed on paper upon allowance of a motion to waive the e-filing requirement, preferably filed in advance or with the document. The motion must contain a showing of undue hardship, significant

prejudice, exigency, or other good cause. For any brief or appendix filed on paper, it is hereby ordered pursuant to Mass. R. App. P. 2 that the rules pertaining to the form and number of briefs and record appendices required to be filed are suspended as follows:

1. Copies of briefs and appendices. Notwithstanding the requirement in Mass. R. App. P. 19(b)(1) that 7 copies be filed, hereafter only 4 copies of each brief and each record appendix shall be filed with the Clerk, unless the Court or a single justice by order in a particular case shall direct a different number, and 2 copies of each shall continue to be served on counsel for each party separately represented.
2. Copies of exhibit and transcript volumes. Notwithstanding the requirement in Mass. R. App. P. 18(e) that in civil cases 5 copies of exhibits volumes and 2 copies of transcript volumes may be filed, hereafter only 2 copies of each exhibit volume and 1 copy of each transcript volume shall be filed with the appendix, and 1 copy of each exhibit and transcript volume shall continue to be served on counsel for each party separately represented.
3. Inmate filings. For self-represented litigants who are confined in an institution, the requirement of Mass. R. App. P. 20(a) that a brief must have a color cover is suspended and no color cover is required. Pursuant to paragraph F(1), only 4 paper copies need be filed.

**G. Format.** All e-filed documents shall comply with the formatting requirements of the Massachusetts Rules of Appellate Procedure except as modified by the Appeals Court's e-filing program and specifications. See generally E-Filing Rule 1.

**H. No Paper Duplicates.** All documents that are e-filed shall be submitted electronically only. Neither a paper original nor duplicate shall be filed unless specifically requested by the Court.

**I. Electronic Service of E-Filed Documents.**

1. Service of Documents E-Filed in the Appeals Court. Pursuant to Mass. R. E-Filing 3(d), the filer's registration with EfileMA.com constitutes consent to receive electronic service for all e-filed documents in any case in which the filer is involved. All documents submitted electronically through EfileMA.com may be electronically served through EfileMA.com pursuant to E-Filing Rule 7 and such service shall be considered compliant with Massachusetts Rule of Appellate Procedure 13, provided the other party or party's attorney has registered with EfileMA.com. If a party's representative has not registered with EfileMA.com, service should be made by the conventional methods (e.g., paper copies and regular mail).
2. No Copies of Applications, Responses, or Oppositions Filed in the Supreme Judicial Court. A party is not required to file or serve a copy in the Appeals Court of any

application, response, or opposition that is filed in the Supreme Judicial Court pursuant to Mass. R. App. P. 11(d) and 27.1(d).

**J. Mandatory Electronic Notice.**

1. Notice from Tyler. The eFileMA.com system will transmit electronic notifications (i) when an e-filed document is submitted, (ii) when the Clerk's Office accepts or rejects the document, and (iii) possibly at other times during an e-filing transaction.

2. Notice from the Appeals Court. All attorneys will receive electronic notifications of the court's actions, orders, judgments, rescripts, and decisions. The Court will use the email addresses on file with the BBO pursuant to S.J.C. Rule 3:07. Attorneys must ensure that their BBO email address is up to date. A self-represented litigant may authorize the Court to send electronic notice in lieu of paper notices.

**K. Support.** All technical support shall be provided by Tyler. The Appeals Court's Clerk's Office may be contacted with procedural questions or with questions regarding the application of this Order.

**L. Cessation of Appeals Court's "emotions" email filings.** The Appeals Court will no longer accept emails and PDFs of filings at its "emotions@appct.state.ma.us" address. All electronic filings shall be submitted via the eFileMA.com system.

**M. Prior Orders Superseded.** The following previous orders of the Appeals Court are hereby superseded by this Order and no longer in effect:

1. Appeals Court Order Concerning Electronic Filing Pilot Project, adopted March 30, 2016.

2. Appeals Court Order Concerning Number of Copies of Brief and Record Appendix to be Filed, adopted July 29, 2016.

3. Appeals Court Standing Order Requiring the Electronic Filing of All Motions and Letters Filed After Panel Assignment, adopted May 1, 2010, and amended June 1, 2011.

**N. Future Changes and Updates.** This order may be superseded or amended, in writing, at any time.

**O. Effective Date.** This Order shall become effective on [to be determined].



## **[Proposed amendments to the] Standing Order Concerning Petitions to the Single Justice Pursuant to G. L. c. 231, sec. 118 (First Paragraph) or Rule 12(a) of the Uniform Rules on Impoundment Procedure**

**(a) Contents of Petition for Relief; Form.** A petition for relief pursuant to G. L. c. 231, §118 (first paragraph), or Rule 12(a) of the Uniform Rules on Impoundment procedure, shall include, in the following order: (1) a request for review, which shall state briefly the nature of the order or action of the trial court from which review is sought, the entry date of such order or action, and the name of the judge who entered it; (2) a statement of the issues of law raised by the petition; (3) a statement as to whether a party has filed, served, or intends to file a motion for reconsideration in the trial court; (4) a statement of the specific relief requested; and (5) an addendum containing a copy of the order or action of the trial court (a draft order for the single justice may be attached). References to the parties in the petition shall be by designation of the party in the trial court (e.g., "plaintiff," "defendant," "third-party defendant," etc.). The petition shall not exceed five pages of text compliant with Mass.R.A.P. 20[a][1]-[3] without leave of the court.

**(b) Supporting Memorandum of Law and Record Appendix.** The petition shall, unless otherwise ordered, be accompanied by a memorandum of law (not to exceed fifteen pages of text compliant with Mass.R.A.P. 20[a][1]-[3] unless leave of the court has been obtained) in support of the petitioner's position, with citations to appropriate authorities and a statement addressing why relief is appropriate. The argument shall make reference to those portions of the record which are directly relevant to the issues raised by the petition. Relevant portions of the record shall be filed as a record appendix, and include a current copy of the trial court docket entries and all relevant papers filed in the trial court, including those filed by the other party or parties. The record appendix shall commence with a table of contents that lists each document contained therein. Only those pleadings, exhibits, and papers which were before the trial court when the order appealed from was entered, and which are necessary for an adjudication of the issues raised, may be submitted.

**(c) Opposition; Form.** Within seven days (ten days if the petitioner's certificate of service required under [d] hereof shows service by first-class mail) after the filing of the petition, or such other time as the court may direct, the other party or parties to the case may, but need not, file and serve an opposition thereto (not to exceed fifteen pages of text compliant with Mass.R.A.P. 20[a][1]-[3] unless leave of court has been obtained) setting forth reasons why the petition should not be granted. The opposition shall not restate matters contained in the petition unless the opposing party is dissatisfied with the statement thereof contained in the petition. The opposition may be accompanied by a supplemental record appendix containing such additional portions of the record as were before the trial court and are necessary for adjudication, and which the petitioner failed to include in its record appendix.

**(d) Filing; Service.** The petition, memorandum, record appendix, and any subsequently filed opposition and supplemental record appendix, shall be filed electronically if the filing party is represented by counsel. Self-represented litigants may file electronically, or may file a single paper original or duplicate in the office of the Clerk of the Appeals Court. Any document required to be e-filed may be filed on paper upon allowance of a motion to waive the e-filing requirement, preferably filed in advance or with the document. The motion must contain a showing of undue hardship, significant prejudice, exigency, or other good cause.

Whether filed electronically or on paper, all filings shall include-with a certificate of service on all other parties in the case, including the service and filing of a copy in the appropriate trial court clerk's office from which the matter arose. ~~No additional paper copies of the petition or opposition are required to be filed in the Appeals Court.~~ The certificate of service shall set forth the name, address, email address, and telephone number of counsel or other persons upon whom service has been made, and specify the date and manner of service. The certificate of service shall identify the name of each party represented by counsel and specify the counsel who represents each party.

Service may be personal, ~~or~~ by first class mail, or electronically with the consent of the person served. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by first class mail is complete on mailing. Registration for and use of the electronic filing system constitutes consent to electronic service, and such service is complete upon e-filing.

**(e) Impounded or confidential information.** In any case in which the trial court entered an order impounding, sealing, or excluding from public access all or any portion of the trial court records, or there is material or information in a party's petition, addendum, opposition, or any appendix that is automatically impounded or deemed confidential by statute or court rule, the parties shall comply with Mass.R.A.P. 16(d), 16(m), and 18(g). The parties shall comply with Supreme Judicial Court Rule 1:24, Protection of Personal Identifying Information in Publicly Accessible Court Documents in all filings to the Appeals Court.

~~**(f) Electronic Copy.** When a party represented by counsel files a petition or opposition thereto, including any supporting memorandum of law, the filer shall, in addition to the paper copy, simultaneously provide the court with a searchable PDF (portable document format) copy of the petition or opposition, and supporting memoranda of law, and record appendix by an email, to which the PDF copies are attached, sent to: emotions@appet.state.ma.us. The court's email will not accept a PDF that exceeds 10 megabytes; any such PDF shall be submitted on a CD.~~

~~The electronic copy and email requirements are waived for self-represented litigants.~~

**(g) Hearing.** The single justice has discretion to determine whether a hearing shall be held.

*Adopted effective September 1, 1989, with strict enforcement delayed until March 1, 1990. Amended effective January 1, 2002; amended effective June 1, 2011. Amended September 24, 2015, effective October 1, 2015. Amended September 28, 2016, effective November 1, 2016. Amended \_\_\_\_\_, effective \_\_\_\_\_.*

## **[Proposed amendments to the] Standing Order Governing Motions to Stay a Judgment or Execution of Sentence Filed Pursuant to Mass. R.A.P. 6**

**(a) Contents of a Motion for a Stay; Form.** A motion for a stay pursuant to Mass.R.A.P. 6 shall include in the following order: (1) a request for a stay, which shall state briefly the nature of the judgment or sentence entered by the trial court for which a stay is sought, the entry date of such judgment or conviction, and the name of the judge who entered it; (2) the text of the order and rationale of the trial court denying the motion for stay or, if no such motion was filed in the trial court, a showing why filing the motion in the trial court was not practicable; (3) a statement of the issues of law raised by the motion; (4) a statement of the specific relief requested; and (5) an addendum containing copies of the judgment, notice of appeal, and the trial court's order denying the prior motion for a stay. References to the parties in the motion shall be by the designation of the party in the trial court. The motion shall not exceed five pages of text compliant with Mass.R.A.P. 20[a][1]-[3] without leave of the court.

**(b) Supporting Memorandum of Law and Record Appendix.** The motion shall, unless otherwise ordered, be accompanied by a memorandum of law (not to exceed fifteen pages of text compliant with Mass.R.A.P. 20[a][1]-[3] unless leave of the court has been obtained) in support of the movant's position, with citations to appropriate authorities and a statement addressing why a stay is appropriate. The argument shall make reference to those portions of the record which are directly relevant to the issues raised by the motion. Relevant portions of the record shall be filed as a record appendix, and include a current copy of the trial court docket entries and all relevant papers filed in the trial court, including those filed by the other party or parties. The record appendix shall commence with a table of contents that lists each document contained therein.

**(c) Opposition, Form.** The non-moving party or parties to the case may, but need not, file and serve an opposition thereto (not to exceed fifteen pages of text compliant with Mass.R.A.P. 20[a][1]-[3] unless leave of court has been obtained) setting forth reasons why the motion should not be granted. The opposition shall not restate matters contained in the motion unless the opposing party is dissatisfied with the statement thereof contained in the motion. The opposition may be accompanied by a supplemental record appendix containing such additional portions of the record as were before the trial court and are necessary for adjudication, and which the movant failed to include in its record appendix.

### **(d) Opposition, Timing.**

(1) For motions filed in all civil matters and for criminal matters entered in the Appeals Court's single justice session (i.e., prior to the entry of an appeal pursuant to Mass.R.A.P. 10[a][1] or [2]), the other party or parties to the case may, but need not, file and serve an opposition thereto within seven days after the service of the motion (ten days if the movant's certificate of service required under [e] hereof shows service by first-class mail), or such other time as the court may direct.

(2) For motions filed in criminal appeals subsequent to the entry of and during the pendency of a direct or collateral appeal in the Appeals Court, the time limit for a response is governed by the provisions of Mass.R.A.P. 6(b)(2).

(3) For motions filed in civil appeals entered pursuant to Mass.R.A.P. 10[a][1], the other party or parties to the case may, but need not, file and serve an opposition thereto within seven days after the service of the motion (ten days if the movant's certificate of service required under [e] hereof shows service by first-class mail), or such other time as the court may direct.

**(e) Filing; Service.** The motion, memorandum, record appendix, and any subsequently filed opposition and supplemental record appendix, shall be filed electronically if the filing party is represented by counsel. Self-represented litigants may file electronically, or may file a single paper original or duplicate in the office of the Clerk of the Appeals Court. Any document required to be e-filed may be filed on paper upon allowance of a motion to waive the e-filing requirement, preferably filed in advance or with the document. The motion must contain a showing of undue hardship, significant prejudice, exigency, or other good cause.

Whether filed electronically or on paper, all filings shall include with a certificate of service on all other parties in the case, including the service and filing of a copy in the appropriate trial court clerk's office from which the matter arose. ~~No additional paper copies of the motion or opposition are required to be filed in the Appeals Court.~~ The certificate of service shall set forth the name, address, and telephone number of counsel or other persons upon whom service has been made, and specify the date and manner of service. The certificate of service shall identify the name of each party represented by counsel and specify the counsel who represents each party.

Service may be personal, ~~or~~ by first class mail, or electronically with the consent of the person served. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by first class mail is complete on mailing. Registration for and use of the electronic filing system constitutes consent to electronic service, and such service is complete upon e-filing.

**(f) Impounded or confidential information.** In any case in which the trial court entered an order impounding, sealing, or excluding from public access all or any portion of the trial court records, or there is material or information in a party's motion, addendum, memorandum, or any appendix that is automatically impounded or deemed confidential by statute or court rule, the parties shall comply with Mass.R.A.P. 16(d), 16(m), and 18(g). See G. L. c. 265, § 24C. The parties shall comply with Supreme Judicial Court Rule 1:24, Protection of Personal Identifying Information in Publicly Accessible Court Documents in all filings to the Appeals Court.

~~(g) Electronic Copy. When a party represented by counsel files a motion or opposition thereto, including any supporting memorandum of law, the filer shall, in addition to the paper copy, simultaneously provide the court with a searchable PDF (portable document format) copy of the motion or opposition, and supporting memoranda of law, either (i) on a CD-ROM, or (ii) by an email, to which the PDF copy is attached, sent to: [emotions@appct.state.ma.us](mailto:emotions@appct.state.ma.us). A PDF copy of the record appendix may be filed if feasible to produce it.~~

~~The CD-ROM and email filing requirements are waived for self-represented litigants.~~

**(gh) Hearing.** The single justice has discretion to determine whether a hearing shall be held.

*Adopted effective June 1, 2011. Amended September 28, 2016, effective November 1, 2016.  
Amended \_\_\_\_\_, effective \_\_\_\_\_.*

### **PROPOSED ORDERS TO BE RESCINDED**

1. Standing Order Requiring the Electronic Filing of All Motions and Letters Filed After Panel Assignment, adopted in 2010. See <http://www.mass.gov/courts/case-legal-res/rules-of-court/appeals-court/standing-order-filing.html>

2. Order Concerning Electronic Filing Pilot Project, adopted March 30, 2016. See <http://www.mass.gov/courts/case-legal-res/rules-of-court/appeals-court/order-concerning-electronic-filing-pilot-project.html>

3. Order Concerning Number of Copies of Brief and Record Appendix to be Filed, adopted July 29, 2016. See <http://www.mass.gov/courts/case-legal-res/rules-of-court/appeals-court/order-number-copies.html>